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Nos. 724, 797

In the Supreme Court of the United States

OCTOBER TERM, 1936

ALBERT A. CARMICHAEL, APPELLANT

v.

SOUTHERN COAL & COKE COMPANY, APPELLEE

ALBERT A. CARMICHAEL, APPELLANT

v.

GULF STATES PAPER CORPORATION, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ~~OKLAHOMA~~ ALABAMA.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

The United States is interested in the present suit for two reasons. First, the case may present the question whether the constitutionality of a federal act may be tested by making the operation of a state statute depend upon is constitutionality. Second, if the constitutionality of a federal act may be so tested, the suit may involve the question whether the Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, U. S. C., Supp. II, Title 42, c. 7) is within the constitutional powers of

Congress. The United States is, therefore, filing this brief *amicus curiae*.

STATEMENT

The court below, in holding unconstitutional the Alabama Unemployment Compensation Law (Act of 1935, c. 447, as amended by Acts of 1936, chs. 156, 194, 195, and Act of February 10, 1937, Spec. Sess., 1937), found it necessary to pass only upon the alleged conflict of that Act with Article I, Sec. 23, of the Alabama Constitution, and with the Fourteenth Amendment to the Constitution of the United States.

Since the decision of the court below the Supreme Court of Alabama, in *Beeland Wholesale Co.* v. *Kaufman*, decided March 17, 1936, has held that the Alabama Act did not violate the Alabama Constitution. It also decided, however, that the operation of the Alabama Act was dependent upon the validity of a portion of the Federal Social Security Act under the Federal Constitution, and, passing upon that question, held the Federal Act constitutional, and the Alabama Act, therefore, operative. It will doubtless be urged in support of the judgment below that the Alabama Act is, if not unconstitutional, at least inoperative because the Federal Act is unconstitutional.

Section 17 of the Alabama Act, as amended by the Act of April 21, 1936, c. 156, provides:

> It is expressly provided that in the event the Supreme Court of the United States shall

hold title three or title nine of the Federal "Social Security Act" approved by the President, August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes, or pay-roll deductions made hereunder and then remaining unexpended shall be returned * * *.

* * * * *

This act shall take effect immediately upon its passage and approval by the Governor.

Section 18 (b), as amended by Act of February 10, 1937 (H. B. No. 275, Governor's No. 83, Spec. Sess., 1937), provides:

If at any time the Governor shall find (1) that the provisions of this Act requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the Supreme Court of this state or under the United States Constitution by the Supreme Court of the United States in such manner that any person or concern required to pay contributions under this Act might secure a similar decision; or (2) that the tax imposed by Title IX of the Social Security Act, as amended, or any other federal tax against which contributions under this Act may be credited has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, with the result that no

> portion of the contributions required by this Act may be credited against such federal tax; the Governor shall publicly so proclaim and upon the date of such proclamation the provisions of this Act requiring the payment of contributions and benefits shall be suspended.

These sections were interpreted by the Supreme Court of Alabama in the *Beeland* case, *supra*.[1] The court said:

> But the [Alabama] Act is not dependent upon action by other states, but the validity of an existing Act of Congress. Expressly made to depend upon a decision of the United States Supreme Court upholding that Act, in reality it is merely dependent upon its constitutionality. Reference is made to the decision of the United States Supreme Court because that is the only court which has the authority effectually to declare it unconstitutional. Dependence upon its decision in that respect is but dependence upon the effect of that decision. Its effect is that the Federal Act is valid or that it is invalid from the beginning. It never existed if it is declared to be unconstitutional. We see no reason why an Alabama statute may not be made to depend upon the validity of an existing act of Con-

[1] The amendments to Section 18 were enacted subsequent to the argument of the *Beeland* case, but prior to the decision. We assume that the amendments were considered by the court, although they are not referred to in the opinion.

> gress into which it is tied in a way necessary for it to have an effective field of beneficial operation for the public welfare. Such we think is the status of the Alabama Act, and it cannot be stricken down on that account.
>
> It is necessary for us to lay down the law of this suit as we understand it, and since the Alabama Act is dependent upon the constitutionality of the Federal Act, it is necessary to express our opinion as to that insofar as it affects its unemployment features, since the United States Supreme Court has not acted on it.

The Alabama Act might well have been construed to mean that it was to be operative unless and until this Court should render a decision adjudging Title IX, or perhaps also Title III, unconstitutional. The State Supreme Court has, however, construed the Act to mean that its operation, ever since its enactment, has been dependent upon the existence of a valid Federal Act, and has found the Federal Act to be valid. We submit that in this situation this Court has no occasion to pass upon the validity of either title of the Federal Act upon the present appeals.

I

THE ALABAMA SUPREME COURT HAS HELD THAT THE ALABAMA ACT IS OPERATIVE, AND THIS COURT SHOULD NOT GO BEHIND THE DECISION OF THE STATE COURT ON THAT QUESTION

This Court, of course, has *jurisdiction,* on appeals from inferior federal courts, to pass on

questions of state law as well as questions of federal law. Its *rule of decision*, however, in matters of state law is to follow the determination of the State courts. *Ex parte Worcester National Bank*, 279 U. S. 347; *Great Northern Railway Co.* v. *Sunburst Co.*, 287 U. S. 358. Accordingly, this Court will follow the ruling of the courts of the States as to whether a state statute has come into being or is presently operative. *County of Leavenworth* v. *Barnes*, 94 U. S. 70, 71; *Town of South Ottawa* v. *Perkins*, 94 U. S. 260, 268; *Post* v. *Supervisors*, 105 U. S. 667; *Wilkes County* v. *Coler*, 180 U. S. 506; *Peters* v. *Broward*, 222 U. S. 483.

Nor should this rule be departed from when the determination by the state court of the state question involves the validity of a federal statute. The question whether the law is operative is still a state question. Relief, if granted appellees on this ground, would be relief under the *state* statute, not under the Federal Constitution.

The decision in *Miller's Executors* v. *Swann*, 150 U. S. 132, is closely analogous. In that case a decision of the Supreme Court of Alabama had turned upon the proper construction of an Alabama statute authorizing the sale of certain lands which had been granted to Alabama by Congress "in accordance with the acts of Congress granting the same". The Alabama court had construed the federal acts, thus incorporated into the state law, as imposing a condition precedent to a sale. An appeal was taken to this Court upon the ground

that the acts of Congress, properly construed, did not impose such a condition. The appeal was dismissed for lack of a federal question. The Court said (pp. 136–137):

> The question is not what rights passed to the State under the acts of Congress, but what authority the railroad company had under the statute of the State. The construction of such a statute is a matter for the state court, and its determination thereof is binding on this court. *The fact that the state statute and the mortgage refer to certain acts of Congress as prescribing the rule and measure of the rights granted by the State, does not make the determination of such rights a Federal question.* A State may prescribe the procedure in the Federal courts as the rule of practice in its own tribunals; it may authorize the disposal of its own lands in accordance with the provisions for the sale of the public lands of the United States; and in such cases an examination may be necessary of the acts of Congress, the rules of the Federal courts, and the practices of the Land Department, and yet the questions for decision would not be of a Federal character. The inquiry along Federal lines is only incidental to a determination of the local question of what the State has required and prescribed. The matter decided is one of state rule and practice. The facts by which that state rule and practice are determined may be of a Federal origin. [Italics supplied.]

A similar situation was presented in *Louisville & Nashville R. R. Co.* v. *Western Union Telegraph Co.*, 237 U. S. 300, in which it was suggested by the Court that jurisdiction of the writ of error might be sustained on the ground that the act of Louisiana under which appellee operated required that it comply with an act of Congress. The Court held that the writ of error could not be sustained on that basis, saying (p. 303):

> But when, as here, the foundation of the right claimed is a state law, the suit to assert it arises under the state law none the less that the state law has attached a condition that only alien legislation can fulfill. The state law is the sole determinant of the conditions supposed, and its reference elsewhere for their fulfilment is like the reference to a document that it adopts and makes part of itself. The suit is not maintained by virtue of the Act of Congress but by virtue of the Louisiana statute that allows itself to be satisfied by that Act. See *Interstate Street Ry.* v. *Massachusetts*, 207 U. S. 79, 84.

See also *Gully* v. *First National Bank in Meridian*, 299 U. S. 109.

The ultimate fact determined by the Alabama Supreme Court on this branch of the case is that neither section 17 nor 18 of the Alabama Act renders it inoperative. We submit that in accordance with the general rule a decision of the state court upon the question whether a state statute is operative is conclusive. This fact disposes of the pres-

ent contention; and it would be immaterial even if the state court in reaching that conclusion had passed upon a question of Federal law.

The principle is also illustrated by cases in which the statute or law of one State is drawn in question in the courts of another State. Thus, in *City Bank Farmers' Trust Co.* v. *New York Central R. R. Co.*, 253 N. Y. 49, the issue was whether a transfer was taxable by the laws of Pennsylvania. The Supreme Court of Pennsylvania, in an earlier decision, had held that the Pennsylvania reciprocity provisions did not include residents of New York dying within a certain period, because the Tax Commission of New York and a New York statute had stated that the New York law did not grant a similar exemption to residents of Pennsylvania. The New York Court of Appeals, however, held the ruling of the Tax Commission to be erroneous, and the statute to be unconstitutional. But in determining the law of Pennsylvania, the court, speaking through Chief Judge Cardozo, said (p. 63):

> The judgment before us may not stand while the judgment of the Supreme Court of Pennsylvania is standing unchanged. That judgment, right or wrong, decides the whole issue. The issue is merely this: Do the laws of Pennsylvania, properly interpreted, impose a tax upon the plaintiff's shares of stock in a Pennsylvania corporation? The Supreme Court of Pennsylvania has said that they do. In reaching that conclusion it has had occasion to consider the meaning and effect of

> the statutes of New York. What it has said in that regard does not constitute its decision. What it has said in that regard is a step in the process of reasoning leading up to the decision. In the end it has determined, not the meaning and effect of the statutes of New York, but the meaning and effect of the statutes of Pennsylvania. As to that, as we have said, its authority is final.

See also *Ingenohl* v. *Olsen & Co.*, 273 U. S. 541; *Godard* v. *Gray*, L. R. 6 Q. B. 139, 151; Conflict of Laws Restatement, Section 431.

We submit, therefore, that the decision of the Supreme Court of Alabama, holding that Sections 17 and 18 of the Alabama Act do not render it inoperative, presents no question of federal law, and should not be reexamined by this Court.

II

IF THE VALIDITY OF ANY PART OF THE SOCIAL SECURITY ACT IS TO BE CONSIDERED ON THESE APPEALS, THE ISSUES IN THAT REGARD ARE NO BROADER THAN THOSE RAISED IN A SUIT FOR REFUND OF TAXES PAID UNDER TITLE IX OF THE FEDERAL ACT

If the validity of any portion of the Federal Act is to be considered on these appeals because of the construction accorded the Alabama Act by the Supreme Court of that State in the *Beeland* case, the *scope* of that review must also be limited by the decision to the validity of Title IX of the Federal Act.

The Alabama Supreme Court, in discussing the Social Security Act, referred to Title IX as the

portion of that act upon which the Alabama Act depended. Title III of the Federal Act, which makes grants-in-aid to the States for the administration of their unemployment compensation laws, was referred to, but only as to whether its validity *vel non* would affect the validity of the tax under Title IX. The Alabama Court expressly held that if, in a suit by a taxpayer under Title IX, the doctrine of *Massachusetts* v. *Mellon*, 262 U. S. 447, prevents a consideration of the substantive validity of Title III, the doctrine is equally applicable to eliminate that issue as a condition to the operation of the Alabama Act. The Court said:

> So that in respect to the question here at hand, if the appropriation is independent of the tax and tax was not laid to meet the appropriation, no question here arises as to the power of Congress to make it.

The Alabama Court did, alternatively, go forward to consider the validity of Title III. At most, however, the decision can be construed to mean that the validity of the Federal Act is involved only so far as a taxpayer under Title IX could raise questions concerning other portions of the Act in a suit for a refund of taxes paid.

III

TITLES IX AND III OF THE SOCIAL SECURITY ACT ARE VALID

As we have indicated in Point II, *supra*, if the validity of the Federal Act is in any way in issue in these appeals, the scope of the review is certainly

no broader than that which may be obtained in a suit for refund by a taxpayer under Title IX. The constitutional questions raised in such a case are discussed at length in the Brief for the Respondent in *Charles C. Steward Machine Co.* v. *Davis*, No. 837, which is to be argued immediately after the present appeals. We therefore respectfully refer the Court to that brief for our discussion of those questions.

Respectfully submitted.

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